

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3582 of 1981

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

GIRJASHANKER CHUNILAL PUROHIT

Versus

STATE BANK OF INDIA & ORS

Appearance:

MR GIRISH PATEL for Petitioners

MR PRANAV G DESAI for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 17/10/97

C.A.V. JUDGEMENT

1. The petitioner, an employee of the respondent Bank filed this special civil application before this Court under Article 226 of the Constitution and challenge has been made to the order dated 25th June, 1979 of the disciplinary authority as well as to the order dated 28th August, 1981, annexure 'N' of the disciplinary authority.

2. Under the first order, the disciplinary authority

has ordered for fresh inquiry and another Inquiry Officer has been appointed. After fresh inquiry, under the order annexure 'N' dated 22nd August, 1981, for proved misconduct of the petitioner, the punishment has been given to him of stoppage of three annual grade increments with future effect.

3. The facts of the case, in brief, are that the petitioner was given the chargesheet vide memo dated 5-6-1976. An inquiry has been conducted and after completion thereof the same was placed before the disciplinary authority. After considering the inquiry report, the disciplinary authority opined that three material witness named in the order annexure 'E' dated 25th June, 1979 were not examined in the inquiry. Taking it to be a case of serious infirmity, the inquiry report was not accepted and the order has been made for fresh inquiry and another Inquiry Officer has also been appointed. After fresh inquiry, charges against the petitioner were found proved and under the order annexure 'N' dated 22nd August, 1981, the penalty of withholding of three grade increments with future effect has been given. Hence, this special civil application before this Court.

4. The learned counsel for the petitioner, Shri Girish Patel, made only contention that once the inquiry report has been completed then the disciplinary authority has no authority to pass the order for de novo/fresh inquiry only on the ground that three witnesses were not examined. The witnesses were not examined by the Presenting Officer and it cannot be said to be any illegality in the inquiry. In support of this contention, the learned counsel for the petitioner placed reliance on the two decisions of the Hon'ble Supreme Court in the case of K.B. Deb vs. Collector, Central Excise, Shillong reported in AIR 1971 SC 1447 and in the case of State of Assam vs. J.N. Roy Biswas reported in AIR 1975 SC 2277.

5. The counsel for the respondent-Bank, Shri Pranav G. Desai, on the other hand contended that the petitioner has no case whatsoever. The disciplinary authority in case finds some infirmity in the inquiry, has all the right to order for the fresh inquiry and no exception can be taken to this course adopted by it. In support of this contention, the learned counsel for the respondents placed reliance on the decision of the Hon'ble Supreme Court in the case of Pradyat Kumar vs. C.J. of Calcutta reported in AIR 1956 SC 285. It has next been contended by the learned counsel for the

respondents that earlier to this petition, the petitioner filed special civil application No.2482/81 before this Court in which challenge has been made by him to the order dated 25th June, 1979, annexure 'E', the impugned order in this special civil application and that petition has been withdrawn by him unconditionally, and as such, the second petition is not maintainable. In that petition only relief has been granted not to implement the final order to be passed by the disciplinary authority for a period of ten days after service of the same upon the petitioner. On merits also, the counsel for the respondents has submitted that there are very serious charges against the petitioner of producing the false receipt of the transportation charges of his personal kit. Earlier also, the petitioner has been punished for altering the medical bills.

6. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

7. The learned counsel for the petitioner does not dispute that in the present case the disciplinary authority itself could have hold the inquiry or as done in this case it could have entrusted that work to some of his subordinate officer. The Inquiry Officer is only entrusted with the work of recording the evidence as well as of giving a fact finding report after appreciation of evidence etc.. The disciplinary authority is not an appellate authority over the findings of the Inquiry Officer. The inquiry report is for his help to form the opinion or record a decision whether the misconduct against the delinquent employee is proved or not and in case it is proved then what penalty has to be given to him. After receipt of the inquiry report from the Inquiry Officer, three courses are open to the disciplinary authority. First, it may accept the inquiry report and on the basis of the findings recorded therein of the guilt of the delinquent employee it may give the penalty or award the punishment to him. Second course is where it does not agree with the findings recorded by the Inquiry Officer he may defer therefrom and pass appropriate order of giving the penalty to the delinquent employee. The second course is only where the Inquiry Officer has not found all the charges or any of the charges proved against the delinquent employee. However, in second category of the case, the disciplinary authority has to record its reasons of disagreement with the findings of the Inquiry officer. The third course is to remit the matter back for fresh inquiry where it is satisfied that some infirmity is there in the proceedings.

8. In the present case, the disciplinary authority has found that three material witnesses were not examined. Non-examination of material witnesses may result in a given case of exoneration of the delinquent employee. The counsel for the petitioner has put much emphasis on the fact that if the evidence is not produced in the inquiry then it cannot be a ground to remit the matter back. On the basis of the material produced on the record, the disciplinary authority has to decide the matter but I do not find any substance in this contention of the learned counsel for the petitioner. As stated earlier, the Inquiry Officer is only a helping officer to the disciplinary authority which save his work on being asked by the disciplinary authority. There is no dispute that the disciplinary authority itself could have hold the inquiry. Where the disciplinary authority itself undertakes the job of conducting the inquiry then if it feels that some material witnesses have not been examined it could have call for those witnesses for their examination in the inquiry. If that is permissible to the disciplinary authority then I fail to see that any distinction can be made in a case where he has entrusted his this job to the Inquiry Officer. On receipt of the inquiry report if the disciplinary authority is satisfied that some of the material witnesses were not examined then certainly it is within its competence to remit the matter back to the Inquiry Officer to examine those witnesses and then give its finding. The course which has been adopted in the present case by the disciplinary authority cannot be said to be unreasonable or arbitrary or against the basic principles of natural justice. What only care has to be taken is that the Inquiry Officer should afford an opportunity of cross-examination of those witnesses to the delinquent employee where he has presented himself for doing the same.

9. The two decisions of the Hon'ble Supreme Court on which strong reliance has been placed by the counsel for the petitioner are of little help to the petitioner. On the contrary, from those decisions of the Hon'ble Supreme Court in the case of K.B. Deb vs. Collector, Central Excise, Shillong (supra) and in the case of State of Assam vs. J.N. Roy Biswas (supra), it is clear that such a course is certainly permissible to the disciplinary authority. I cannot do better than to reproduce here the relevant observation from that judgment, which is as under:

13. It seems to us that Rule 15, on the face of it, really provides for one inquiry but it may

be possible if in a particular case there has been no proper enquiry because some serious defect has crept into the inquiry or some important witnesses were not available at the time of the inquiry or were not examined for some other reason, the Disciplinary Authority may ask the Inquiry Officer to record further evidence. But there is no provision in rule 15 for completely setting aside previous inquiries on the ground that the report of the Inquiring Officer or Officers does not appeal to the Disciplinary Authority. The Disciplinary Authority has enough powers to reconsider the evidence itself and come to its own conclusion under rule 9.

10. The second decision also nowhere lays down that such a course is not available to the disciplinary authority or disciplinary authority could not have ordered for examination of material witnesses in the inquiry after submission of the inquiry report.

11. There is yet another ground on which I am satisfied that this writ petition is barred to the extent it relates to the challenge to the order annexure 'E' dated 25th June, 1979. The petitioner has not filed rejoinder to the affidavit in reply filed by the respondents. So the fact that the petitioner filed earlier special civil application No.2482/81 against the order annexure 'E' dated 25th June, 1979 is uncontroverted. It is also not disputed that that petition has been unconditionally withdrawn by the petitioner. In view of these undisputed facts, the question does arise whether the second petition on the same cause of action is barred by the principle analogous to the provisions as contained in Order 23 Rule 1 C.P.C.. This proposition of law is no more res integra and reference in this respect may have to one decision of the Hon'ble Supreme Court in the case of Sarguja Transport Service vs. State Transport Appellate Tribunal, Gwalior reported in AIR 1987 SC 88 and two decisions of this Court in the case of Natwar Textiles vs. Union of India reported in 1990 (1) GLR 338 and in the case of Athhavisu Modh Chaturvedignati Panch & Ors. vs. State of Gujarat reported in 1996 (2) GCD 654.

12. In the result, this special civil application fails and the same is dismissed. The petitioner is directed to pay Rs.2000/- by way of costs of this petition to the respondent-Bank. Rule discharged. Interim relief, if any, granted by this Court stands

vacated.

zgs/-